In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 3870 of 2007

Date of Decision: May 25, 2007

Sanjiv Kumar

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand

Present: Mr. Ram Lal Gupta, Advocate
for the petitioner.

...

J.S. Khehar, J.

The Punjab Public Service Commission (hereinafter referred to as the Commission), advertised 52 posts of Punjab Civil Services (Judicial Branch) on 12.2.2007. The last date of submission of application forms depicted in the aforesaid advertisement, as well as, the date of submission of the nomination roll, was 12.3.2007. A perusal of the aforesaid advertisement further reveals, that the competitive examination for recruitment to the advertised posts, was scheduled to be held on 15.7.2007.

The grievance of the petitioner is based on a newspaper report published in the Chandigarh edition of the Hindustan Times dated 25.2.2007 depicting, that the Supreme Court had called upon all the High Courts in the country to hold a written test for the recruitment of the State

Judicial Services Officers for their respective States. In the aforesaid newspaper report, it is also projected, that the Apex Court had restrained the State Public Service Commissions, including the Punjab Public Service Commission from holding the competitive examination for the process of recruitment to the Punjab Civil Services (Judicial Branch).

Despite the aforesaid newspaper report, it is the contention of the learned counsel for the petitioner, that the Commission issued an advertisement dated 28.2.2007, notifying the holding of preliminary examination as a part of the Punjab Civil Services (Judicial Branch) examination. The Commission then re-advertised the posts which it had advertised earlier, on 7.3.2007, whereby it was clarified, that prior to the holding of the competitive examination, the preliminary examination would be conducted on 15.5.2007. According to the instant advertisement, the competitive examination was scheduled to be held on 15.7.2007 as earlier advertised.

In the background of the factual position noticed hereinabove, the first contention of the learned counsel for the petitioner was, that in terms of the judgement rendered by the Supreme Court, all examinations had to be conducted by the respective High Courts. Therefore, the holding of the preliminary examination, as also, the competitive examination at the hands of the Commission, is in clear violation of the mandate of the order passed by the Apex Court.

Despite the fact, that the petitioner is an advocate, and was placing reliance on a judgement rendered by the Supreme Court, yet it has astounded us, that he relied on a newspaper item rather than the very judgement on the basis of which the first contention has been advanced. It

would be pertinent to mention, that the issue in hand relates to the decision rendered by the Supreme Court in Malik Mazhar Sultan and another Vs. U.P. Public Service Commission and others, JT 2007(3) SC 352. A perusal of the aforesaid judgement clearly brings forth, that the directions contained in the judgement rendered by the Supreme Court in Malik Mazhar Sultan's case (supra) would not be applicable to the States of Himachal Pardesh, West Bengal, Punjab and Kerala, and that, the process of selection in the aforesaid States, would be conducted by the respective Public Service Commissions. In view of the above, we find no merit in the first contention of the learned counsel for the petitioner.

The second contention advanced by the learned counsel for the petitioner was, that the mandate of the statutory rules, regulating the process of recruitment to the Punjab Civil Services (Judicial Branch), do not envisage the holding of any preliminary examination, and as such, the advertisement issued by the Commission, requiring the candidates who desire to participate in the process of selection to appear in the preliminary examination, was in clear violation of the mandate of the aforesaid statutory rules.

In the original writ petition, as had been filed by the petitioner, the statutory rules regulating the appointment of Punjab Civil Services (Judicial Branch), had not been extracted. We, therefore, required the learned counsel for the petitioner to place the same on the record of this case. In compliance with our directions, the petitioner filed C.M. No.4910 of 2007, enclosing therewith the statutory provisions regulating recruitment to the Punjab Civil Services (Judicial Branch). We have perused the aforesaid rules. Part C of the aforesaid rules, is titled “Examination of

Candidates". Part C starts with the following inscription:-

> "The following rules and instructions, which are liable to alteration from year to year, are prescribed for the examination of candidates for admission to the Judicial Branch of the Punjab Civil Service."

It is, therefore apparent, that the statutory rules regulating recruitment to the Punjab Civil Services (Judicial Branch) do not lay down any specific procedure for holding the selection process, and that, the statutory rules themselves clarify, that it is open to the selecting agency to alter the process prescribed for the holding of the examination from year to year. It, is therefore, not possible for us to accept, that there is any defined process of selection stipulated by the statutory rules regulating appointment to the Punjab Civil Services (Judicial Branch). Since it is open to the Commission to make alterations in the process of selection on a year to year basis, we are satisfied, that the Commission was vested with the authority to require the holding of a preliminary examination as a part of the process of selection.

The third contention of the learned counsel for the petitioner was, that adequate time was not allowed to the candidates who desired to participate in the process of selection for appointment to the Punjab Civil Services (Judicial Branch) to prepare themselves for the preliminary examination, and that, for the present process of selection, either the preliminary examination should be done away with, or it should be deferred so as to allow the candidates adequate time to prepare themselves for the same.

This contention of the learned counsel for the petitioner

deserves to be rejected summarily. In this behalf, it would be pertinent to mention, that as per the advertisement dated 7.3.2007, the preliminary examination was to be held on 15.5.2007. It is, therefore obvious, that all the candidates who desired to prepare themselves for the process of recruitment to the Punjab Civil Services (Judicial Branch), had more than two months' time to prepare for the preliminary examination. In terms of the judgement rendered by the Supreme Court in Malik Mazhar Sultan's case (supra), the preliminary examination was to comprise of objective questions with multiple choice which could be scrutinised by a computer. It is, therefore apparent, that the candidates were not only made aware of the preliminary examination well in time, but were also aware of the nature of the questions to be posed. In the aforesaid view of the matter, it is not possible for us to accept the instant contention of the learned counsel for the petitioner.

Next in the series of contentions advanced by the learned counsel for the petitioner is connected with the contention examined in the foregoing paragraph. In continuation of the third contention advanced by the learned counsel for the petitioner, it was submitted, that by the impugned advertisement dated 7.3.2007, candidates appearing in the final year or semester examination of the Bachelor of Laws course, have been made eligible to participate in the preliminary examination. According to the learned counsel for the petitioner, it is well nigh impossible for the freshers to prepare for the preliminary examination at such a short notice, and more so, because the preliminary examination was being held for the first time ever, in the State of Punjab. It is, therefore, the contention of the learned counsel for the petitioner, that the instant process of selection with

the introduction of a preliminary examination, was a sham and anti-thesis to the very system of the examination. The instant contention advanced by the learned counsel for the petitioner does not lie in the mouth of the petitioner. In so far as, the petitioner is concerned, he qualified the Bachelor of Laws examination well before the year 2001. This is obvious from the fact, that the petitioner was enrolled as an advocate with the Bar Council of Punjab and Haryana on 27.9.2001. No such candidate who has appeared in the final year or semester examination of the Bachelor of Laws Course, has raised the instant contention before us. Had there been any difficulty with any such candidate, he would have definitely raised an issue in that behalf. In the absence of any petition at the hands of any such candidates, we are of the view, that the instant contention is a figment of the petitioner's own imagination. The same, therefore, deserves to be rejected.

The last contention advanced on behalf of the petitioner was, that the statutory rules regulating recruitment to the Punjab Civil Services (Judicial Branch) mandate, that application forms should be submitted to the District Judge within whose jurisdiction the candidate practices. It was also submitted, that the concerned District Judge would obtain a declaration from every candidate to the effect, that the contents of his application are true. It is after the scrutiny of the application forms submitted by the candidates, that the District Judge would forward the rolls prepared in his office, after the same have been verified to the effect, that the candidate fulfils the qualifications prescribed. That rolls would be forwarded to the Commission so as to allow such candidates to participate in the process of selection. In this behalf, learned counsel for the petitioner has also invited our attention to the first advertisement issued by the Commission, inviting

candidates for appointment against the 52 posts of Punjab Civil Services (Judicial Branch), dated 12.2.2007, wherein the statutory rules laying down the procedure of submission of application forms, as well as, nomination rolls in terms of the recruitment rules, were sought to be adhered.

It is not possible for us to accept the contention of the learned counsel for the petitioner noticed in the foregoing paragraph. The procedure envisaged for submission of application forms so as to reach the Commission, whereupon it would conduct the process of selection, for all intents and purposes, must be deemed to be directory in nature. The very fact, that the applications were invited directly so as to submit to the Commission, cannot be a basis for the annulment of the entire process of selection. Even otherwise, it would be pertinent to mention, that all that the Commission has done, is to follow the mandate of the directions contained in the order passed by the Supreme Court in Malik Mazhar Sultan's case (supra). For the aforesaid reasons, it is not possible for us to accept the last contention of the learned counsel for the petitioner.

No other or further submissions were advanced.

For the reasons recorded above, we find no merit in this petition, and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

May 25, 2007.
sk.